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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,107	04/14/2004	Wayne O. Duescher	638.014US1	7549
7590	02/09/2009	Mark A. Litman & Associates, P.A. York Business Center, Suite 205 3209 West 76th St. Edina, MN 55435	EXAMINER LAZORCIK, JASON L	
ART UNIT	PAPER NUMBER		1791	
MAIL DATE	DELIVERY MODE		02/09/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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I. 10/824,107	4/14/2004	DUESCHER, WAYNE O.	638.014US1

EXAMINER

JASON L. LAZORCIK

ART UNIT	PAPER
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1791 20090122

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Commissioner for Patents

In response to the Order remanding the Appeal to the Examiner from the BPAI dated January 12, 2009, the following miscellaneous communication is submitted responsive to Applicants communication dated February 8, 2008

- 1.The information disclosure statement filed February 8, 2008 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because;
 - 1) the IDS was not submitted prior to the close of prosecution, i.e. before the mailing of the Final Office action dated 12/29/2006, as required under 37 CFR 1.97(c) (see MPEP §609.04(b) [R-5]),
 - 2) The IDS does not comply with the requisite format as set forth under paragraphs (a)(1), (a)(2), and (a)(3) under 37 CFR 1.98, and
 - 3) the IDS is not accompanied by the requisite fees and/or statement under 37 CFR 1.97(e).

It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

In view of the foregoing, the Application is being forwarded back to the Board for a decision on the merits.

/Steven P. Griffin/
Supervisory Patent Examiner, Art Unit 1791